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FEDERAL COMMUNICATIONS COMMISSION  
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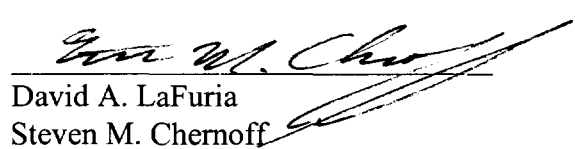
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Revision of the Commission's Rules to )  
Ensure Compatibility with Enhanced 911 )  
Emergency Calling Systems )

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

**SMITH BAGLEY, INC. PETITION FOR WAIVER**  
**OF SECTION 20.18(g) OF THE RULES**

  
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Date: September 7, 2001

No. of Copies rec'd 015  
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## SUMMARY

Smith Bagley, Inc. ("Petitioner") respectfully requests that the Federal Communications Commission ("Commission") grant its request for waiver of the enhanced 911 ("E911") Phase II deployment provisions in Section 20.18(g) of the Commission's rules. Petitioner, a provider of cellular services in Arizona and New Mexico, has elected to deploy a handset-based solution to provide location information to the public safety answering points ("PSAPs") in its service territory.

Although Petitioner is committed to implementing the necessary handset and network upgrades as quickly as possible, several factors have prevented it from doing so in accordance with the schedule mandated by the Commission's rules. First, as a small carrier serving a primarily rural subscriber base, Petitioner lacks the bargaining power necessary to ensure that upgraded handsets are made available prior to the Commission's deployment dates. Second, Petitioner faces an additional layer of negotiation in the network of sales agents that comprise the greater part of its distribution system. Third, despite Petitioner's good-faith efforts to ensure the necessary public safety interfaces for Phases I and II of E911, the local exchange carriers ("LECs") and PSAPs in its service area have not yet provided these interfaces. Finally, the introduction of upgraded handsets will necessarily be slowed by Petitioner's successful new initiative that offers low-cost cellular service to members of Native American communities.

Petitioner is committed to the rapid improvement of public safety communications and will work diligently to address the issues described above. In pursuit of this objective, Petitioner proposes the following implementation schedule:

- begin selling location-capable handsets by first quarter 2003;
- achieve 25% benchmark by second quarter 2003;
- achieve 50% benchmark by fourth quarter 2003;
- achieve 100% benchmark by second quarter 2004;
- achieve 95% total penetration benchmark by fourth quarter 2006.

Petitioner's proposal represents a slightly longer deferral than the schedules proposed by several other carriers. This is due to the unique combination of circumstances which, Petitioner believes, places it in an unusually difficult position as it strives to achieve Phase II compliance. However, in the event the Commission cannot grant the timetable proposed herein, Petitioner alternatively proposes a nine-month deferral similar to those set forth by Inland and ALLTEL.

Petitioner's waiver request is "specific, focused and limited in scope, and with a clear path to compliance," and its grant will serve the public interest. Accordingly, the Commission should grant Petitioner's request.

Smith Bagley, Inc. (hereinafter “Petitioner”), by its attorneys and pursuant to Section 1.925 of the Commission’s rules, hereby requests a waiver of the enhanced 911 (“E911”) Phase II location accuracy provisions in Section 20.18(g) of the Commission’s rules. Specifically, Petitioner seeks a waiver of the requirement that carriers selecting a handset-based Phase II E911 solution follow a phased-in implementation schedule beginning October 1, 2001. As set forth below, Petitioner is unable to ensure the deployment of location-capable handsets in accordance with the Commission’s Phase II rules. Petitioner therefore proposes a modified schedule that will permit the deployment of location-capable handsets beginning in the first quarter of 2003. Such a request is consistent with the Commission’s goals in this E911 proceeding and is in the public interest.

## **I. BACKGROUND AND FACTS**

Petitioner is a Cellular Radiotelephone Service provider in Arizona and New Mexico. Since 1999, Petitioner has been attempting — largely without success — to obtain the cooperation of the local exchange carriers (“LECs”) and public safety answering points (“PSAPs”) in its service territory to enable Petitioner to provide E911 service to its subscribers. In spite of its good-faith efforts, Petitioner has been unable to establish even Phase I service with the local PSAPs. With the expectation that this situation would soon change, Petitioner filed an Implementation Report with the Commission on November 7, 2000, indicating its intent to employ a handset-based solution for Phase II of E911.

Consistent with Section 20.18(g)(2) of the Commission’s rules, Petitioner intends to begin providing Phase II location information within six months of a PSAP request. Pursuant to Section 20.18(g)(1) of the Commission’s E911 rules, carriers selecting a handset or hybrid solution must begin selling and activating location-capable handsets by October 1, 2001, regardless of whether a valid PSAP request has been received. The rules further require such carriers to ensure that at least

25% of new handset activations be location capable by December 31, 2001; that 50% of handset activations be location-capable by June 30, 2002; that 100% of new digital handset activations be location-capable by December 31, 2002; and that 95% penetration of location-capable handsets be achieved by December 31, 2005. Despite its intention to fully comply with the Commission's Phase II E911 requirements as soon as reasonably possible, Petitioner is unable to meet the Commission's implementation schedule for its handset-based Phase II solution.

As has been demonstrated in the record, ALI-compatible handsets are simply not forthcoming from manufacturers in accordance with the Commission's deployment schedule.<sup>1/</sup> However, even assuming some manufacturers make such handsets "generally available" before October 1, 2001, Petitioner lacks the size and resources to negotiate directly with handset manufacturers for the necessary upgrades. Moreover, due to the decentralized structure of Petitioner's distribution network, Petitioner lacks the ability to compel its independent sales agents to place orders for location-capable handsets. Petitioner's compliance efforts are further complicated by the successful launch and rapid growth of its VISIONONE™ initiative, a program that enables Petitioner to offer affordable wireless communication services to low-income subscribers in Native American communities.

Petitioner is aware of the large number of petitions for waiver that are currently before the Commission in this proceeding. Many of them were filed by companies that, like Petitioner, are

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<sup>1/</sup> See Western Wireless Corporation Petition for Waiver of Section 20.18(g) at 11 (Aug. 31, 2001) ("Western Wireless Petition"); Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II Implementation Milestones at 13-16 (Aug. 23, 2001) ("Leap Wireless Petition"); Comments of AT&T Wireless Services, Inc. at 6 (Aug. 20, 2001) (filed in support of Sprint PCS petition for waiver); Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules at 3 (July 30, 2001) ("Inland Petition"); Qwest Wireless, LLC and TW Wireless, LLC's Petition for Extension of Time or Waiver of Section 20.18 of the Rules at 8 (July 25, 2001) ("Qwest Petition").

primarily rural carriers without the financial resources or leverage of the national service providers. Petitioner faces even steeper challenges as it attempts to fulfill the dual objectives of deploying E911 and — as evidenced by its VISIONONE™ initiative — aggressively deploying services in low-income areas that are historically lacking in telecommunications service. In recognition of these additional challenges, where other carriers have asked the Commission to defer most or all of the Phase II handset deployment dates by nine months,<sup>2/</sup> Petitioner believes that its particular circumstances warrant a fifteen-month deferral of the deadlines for new handsets and a nine-month deferral of the 95% total penetration deadline. Thus, Petitioner requests that the Commission consider Petitioner to be in compliance with Section 20.18(g) if it begins selling and activating location-capable handsets by the first quarter of 2003, ensures that at least 25% of new handsets be location-capable by the second quarter of 2003, achieves the 50% benchmark by the fourth quarter of 2003, the 100% benchmark by the second quarter of 2004, and the 95% ALI handset penetration benchmark by the fourth quarter of 2006. Should the Commission deem this proposed timetable inappropriate, Petitioner requests a nine-month deferral similar to those proposed by Leap Wireless, Inland and ALLTEL, but with an allowance for a further deferral under certain enumerated circumstances.

Because Petitioner's request is "specific, focused, and limited in scope, and with a clear path to compliance," waiver of the Commission's October 1, 2001 deadline is warranted.<sup>3/</sup> Moreover,

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<sup>2/</sup> See Leap Wireless Petition at 6; Inland Petition at 8; ALLTEL Communications, Inc Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules at (i) (July 25, 2001) ("ALLTEL Petition").

<sup>3/</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58 (2000) ("Fourth MO&O").

because of the lack of Phase II — indeed even Phase I — readiness on the part of the PSAPs in Petitioner’s service area, strict enforcement of the Phase II handset compliance dates would not serve the purpose of the E911 rules. Finally, a handset solution will likely enable customers to benefit from a superior degree of location precision as location-capable handsets are put into use.<sup>4/</sup> Accordingly, the requested waiver is in the public interest and should be granted.

## **II. PETITIONER MEETS THE STANDARD FOR GRANT OF THE REQUESTED WAIVER**

Generally, the Commission’s rules may be waived when there is good cause shown<sup>5/</sup> and when “special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.”<sup>6/</sup> In the context of E911, the Commission has recognized that individual waivers that are “specific, focused and limited in scope, and with a clear path to compliance” may be granted where, due to “technology-related issues” or “exceptional circumstances,” a wireless carrier is unable to meet the October 1, 2001 deadline.<sup>7/</sup> As explained below, Petitioner’s request satisfies this standard.

### **A. Petitioner’s Waiver Is Specific, Focused and Limited in Scope.**

The scope of the request is limited to Section 20.18(g)(1). In contrast to other petitions filed in this proceeding, Petitioner does not need to seek a waiver of Section 20.18(f) or 20.18(g)(2), since

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<sup>4/</sup> See Revision of the Commission’s Rules to Ensure Compability with Enhanced 911 Emergency Calling Systems, Third Report and Order, 14 FCC Rcd 17388, 17403 (1999) (“Third Report and Order”); ALLTEL Petition at 30.

<sup>5/</sup> 47 C.F.R. § 1.3.

<sup>6/</sup> Fourth MO&O at 17457; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>7/</sup> Fourth MO&O at 17457-58.

compliance with those sections is required only after a valid request from a PSAP is received. Although Petitioner has made every effort to secure the cooperation of the LECs and the PSAPs in its service territory for the provision of Phase I service, it has been unsuccessful and Petitioner's service area remains without Phase I capability as a result. Consequently, no Phase II requests have been made, nor could they reasonably be made at this point because of the lack of PSAP readiness. Because no requests for Phase II location information are anticipated in the near term, Petitioner has narrowly tailored its waiver request to allow it to pursue a handset-based solution.

**B. Petitioner's Request Sets Forth a "Clear Path to Compliance."**

Rather than request a "broad, generalized waiver"<sup>8/</sup> or an indefinite extension, Petitioner has formulated a proposed schedule that constitutes the best implementation timeline possible under the circumstances. Specifically, Petitioner would begin selling and activating location-capable handset by the first quarter of 2003 rather than October 1, 2001; the date for the 25% benchmark would be extended to the second quarter of 2003; the date for the 50% benchmark would be extended to the fourth quarter of 2003; the date for the 100% benchmark would be extended to the second quarter of 2004; and the 95% benchmark for ALI handset penetration would be extended to the fourth quarter of 2006. This timetable is based on manufacturer estimates of general availability ("GA") dates ranging from the fourth quarter of 2001 to the second quarter of 2002.<sup>9/</sup> As discussed below, Petitioner will face additional lag time due to its lack of negotiating power with handset manufacturers, its decentralized distribution network, and its use of large numbers of donated analog

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<sup>8/</sup> See id.

<sup>9/</sup> See ALLTEL Petition at 13-14.

phones to provide affordable service to low-income populations.

Petitioner's proposed implementation schedule takes this extra time into account with a commitment to begin the sale of location-capable handsets by the first quarter of 2003. However, the remaining three benchmarks for new handsets will follow, spanning the same time intervals provided for in Section 20.18(g)(1). Moreover, Petitioner has requested a shorter extension of the 95% benchmark for total location-capable handset penetration, committing to a fourth quarter 2006 deadline. If the Commission cannot grant the timetable proposed herein, Petitioner alternatively requests an extension in line with those requested by Inland and ALLTEL. However, should the Commission make such a determination, Petitioner also requests that it be provided with the possibility of a further waiver of specific Phase II deadlines in the event they cannot be met due to circumstances beyond Petitioner's control. By proposing these alternative implementation schedules, Petitioner has demonstrated its commitment to meet specific targets and to achieve compliance with the Phase II rules.

**C. Petitioner Faces Technological Issues and Other Special Circumstances.**

Despite its efforts to comply with the Commission's E911 requirements in a timely fashion, Petitioner has faced technological issues and other special circumstances that have hindered its progress.

*1. Petitioner Lacks the Power to Negotiate Technology Upgrades.*

First, Petitioner has been unable to obtain vendor commitments that would allow it to begin selling location-capable handsets by the October 1, 2001 deadline. As a small carrier with a primarily rural subscriber base, Petitioner is not able to negotiate directly with handset manufacturers. As Inland Cellular Telephone Co. stated recently in its Phase II waiver request:

Smaller carriers in smaller markets are at the 'end of the line' for product distribution. It is accepted industry practice that [General Availability] dates are availability dates for large market carriers only and that small carriers can expect significant delays.<sup>10/</sup>

Being thus one step further removed from the equipment negotiating process, Petitioner lacks the ability that larger carriers with regional or nationwide footprints might have to demand that manufacturers provide it with the requisite location technology.<sup>11/</sup>

2. *Petitioner Lacks Central Control of Most of Its Handset Distribution.*

A second obstacle to the introduction of ALI-capable handsets to Petitioner's subscribers is the decentralized structure of its handset distribution network. Petitioner purchases only a small percentage of its subscribers' handsets directly from the manufacturer.<sup>12/</sup> The vast majority of handsets are purchased by individual stores and sold to subscribers pursuant to agency agreements. As currently drafted, these agency agreements do not allow Petitioner to dictate the timing or content of handset purchase orders by those stores. Petitioner is currently negotiating changes to its agency contracts to allow it to have a more central role in handset upgrades. Regardless of the outcome of these efforts, however, Petitioner's reliance on third-party sales channels represents an extra layer of negotiation standing between it and the handset manufacturers.

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<sup>10/</sup> Id. at 6.

<sup>11/</sup> See Corr Wireless's Consolidated Reply Comments Regarding Its Request for Waiver, CC Docket No. 94-102 at 3-4 (Aug. 6, 2001); Reply Comments of D&E/Omnipoint Wireless Joint Venture, L.P. d/b/a PCS One E-911 Phase II Location Technology Implementation Rules, CC Docket No. 94-102 at 3 (Aug. 6, 2001).

<sup>12/</sup> As is demonstrated in the letter attached as Appendix A, even with respect to the small percentage of phones purchased by Petitioner, as distinct from its agents, Petitioner has no control over the availability of location-capable handsets.

3. *Petitioner's Compliance Efforts Have Been Blocked by LEC and PSAP Inaction.*

Petitioner has faced an unfortunate lack of readiness by the LECs and the PSAPs in Petitioner's service area. For nearly two years, Petitioner has been attempting to obtain the cooperation of Citizens Communications ("Citizens"), the LEC in Petitioner's Arizona service area, in establishing the interface between Petitioner and the PSAP that is critical for Phase I. The last official correspondence on the subject was received by Petitioner in October 1999, in the form of a printout sent by Citizens confirming that Petitioner had placed two "DSOs" — orders for a direct connection with the PSAP. Since receiving the DSO confirmation slip, Petitioner has contacted Citizens by telephone on multiple occasions regarding the status of its DSOs, but the LEC has made no apparent progress in completing the orders. Discussions with the PSAP have proved similarly fruitless, resulting only in vague assurances by the PSAP that it has working with Citizens to establish Phase I compatibility. Petitioner's E911 compliance efforts have faced similar obstacles in New Mexico. Currently, Petitioner exchanges traffic with CenturyTel, the LEC in that part of Petitioner's service territory, over a T-1 connection at CenturyTel's central office in Zuni, New Mexico. Petitioner and CenturyTel have substantially completed the negotiation of an interconnection agreement to formalize this arrangement. Although calls have been passed between the two carriers pursuant to this informal arrangement since late 1999, the LEC has indicated that it will not process requests by Petitioner for PSAP interface until the proposed agreement is approved by the appropriate state authority.

Petitioner intends to continue its efforts to obtain the cooperation of Citizens, CenturyTel and the appropriate PSAPs in E911 matters. However, as a result of the LECs' inability to set up a timely PSAP interface, the PSAPs have little incentive to perform the necessary upgrades to be able to

process Phase I or Phase II information. Thus, Petitioner estimates that it will be at least a year before the PSAP is able to process the location information issuing from ALI-capable handsets. With few prospects for the usefulness of location-enabled handsets in the near future, Petitioner is not well positioned now to request that its sales agents voluntarily commit to buying more expensive, upgraded handsets.

4. *Use of Donated Phones Will Necessarily Slow the Introduction of Upgraded Handsets.*

In June 2001, Petitioner launched its VISIONONE™ program, a low-cost cellular phone service plan for Native American communities. This program enables Petitioner to offer basic cellular phone service to tribal residents who were previously unable to obtain or pay for it. Subscribers are provided with handsets as a part of their initial start up package, most of which have been donated by a participating manufacturer. The VISIONONE™ program has proved extremely successful in its first three months, already exceeding a level of 3,500 new subscribers — a phenomenal rate of growth for a small wireless carrier.

These donated analog handsets must be taken into consideration when devising a schedule for compliance with Phase II of E911. Because these handsets are taken from the manufacturer's stock of older handset models, these phones will be at least one upgrade cycle behind any ALI-capable models that become available to Petitioner. Moreover, the rapid increase in VISIONONE™ subscribers means that Petitioner will, by necessity, be introducing greater and greater numbers of older handset models into its market stream. Petitioner should not be penalized by its success, especially where it has succeeded in distributing telephones to unserved areas.

**D. Grant of the Requested Waiver Is in the Public Interest.**

The public policy behind the Commission's E911 rules is to meet important public safety

needs as quickly as reasonably possible.<sup>13/</sup> Allowing Petitioner to introduce location-capable handsets on a more graduated schedule would serve this objective. As the Commission has recognized, any delays resulting from a phased-in handset-based approach would likely be offset by the increased accuracy of such solutions.<sup>14/</sup> In addition to making it possible for Petitioner to provide superior location accuracy, the proposed implementation schedule would have no appreciable effect on the availability of Phase II E911 in Petitioner's service area. As stated above, despite Petitioner's efforts, there is simply no realistic likelihood that Phase I, much less Phase II, capability will be established on the part of the LEC and the PSAP in the immediate future. While Petitioner intends to continue those efforts, the marginal public-interest benefit of introducing location-based handsets by October 1, 2001 would be minimal.

Other public interest considerations also militate in favor of Petitioner's request. As discussed supra, the VISIONONE™ program has successfully introduced affordable wireless service to members of Native American communities who previously could not access such services. The Telecommunications Act of 1996 instructed the Commission to help ensure that all Americans have access to affordable telecommunications services.<sup>15/</sup> The Commission, in its efforts to address the telecommunications needs of Native Americans, has acknowledged that tribal lands have been plagued by "extremely low penetration rates — even compared to penetration levels for other

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<sup>13/</sup> See Fourth MO&O, 15 FCC Rcd at 17449.

<sup>14/</sup> See Third Report and Order, 14 FCC Rcd at 17403 (1999) ("Third Report and Order") ("Moreover, to the extent that a phase-in might delay [automatic location identification] implementation, handset-based solutions may well generate offsetting benefits. For example, it appears that handset-based solutions may achieve greater accuracy.")

<sup>15/</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 706 (1996).

Americans of similar economic status living in rural areas.”<sup>16/</sup> By making cellular service available at very low cost to subscribers, the VISIONONE™ initiative provides members of severely underserved communities with telecommunications capabilities where none existed before. Indeed, several thousand subscribers have 911 service in their households for the first time.

It is clear that a strict approach to enforcing the Phase II rules would jeopardize the continued viability of a program that depends upon the use of handsets that are one or two generations behind those that will be made generally available in the next several months or years. Indeed, subscribers are far better served by owning a telephone with basic emergency calling capabilities than owning no telephone at all. It is against this backdrop that Petitioner requests a waiver that would allow a realistic phase-in of a Phase II solution while preserving Petitioner’s ability to introduce affordable telecommunications services to the communities that are in the greatest need.

### **III. CONCLUSION**

For the reasons set forth above, Petitioner requests a waiver of Section 20.18(g) of the rules. The Commission may contact Richard Watkins, Smith Bagley, Inc., 1500 S. White Mountain Rd., Suite 103, Show Low, AZ 85901; Phone: 520-537-0690; FAX: 520-537-9199; e-mail: [rwatkins@cellularoneaz.com](mailto:rwatkins@cellularoneaz.com) with any questions regarding this request. Please direct a copy of any written communications to undersigned counsel directly.

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<sup>16/</sup> Extending Wireless Telecommunications Services to Tribal Lands, Notice of Proposed Rulemaking, 14 FCC Rcd 13679, 13681 (1999) (footnote omitted).

## **APPENDIX A**



To: Smith Bagley, Inc  
From: Mark Oliver  
CC: Becky Reed, Pam Watson  
Subject: Automatic Location Information (ALI)

This letter is in response to your request for ALI capable phones to meet your October 1, 2001 E911 deadline. Unfortunately, the software that is loaded for the phones does not have ALI-capable software. We will not be able to ship such phones to you by the compliance date.

Although, AA-Wireless Inc cannot speak on behalf of the manufacturers, it is our understanding that ALI-capable handsets that meet the FCC's Phase II requirements will not be available for several months. When they do become available the supply will be very limited and will not be able to meet the immediate demands. Once they become available tests will need to ensure that the software complies with all the FCC's requirements for ALI. I will keep you advised of any changes of updates concerning ALI-capable handsets.

Of the particular handsets that were donated for the VisionOne program, we have researched them and found that they do not have the ALI software loaded in them. Being that the Nokia 282 phone is an older model phone, it was not manufactured with ALI in mind. If there is any further question or concerns please feel free to call me.

Sincerely,  
Mark Oliver  
AA-Wireless Inc,  
3961 Landmark St  
Culver City, Ca 90232  
800-788-8801 ext 153  
310-838-9333 Fax

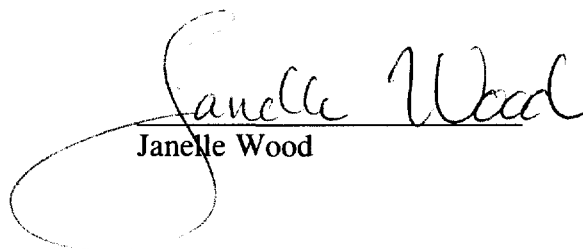
**CERTIFICATE OF SERVICE**

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 7<sup>th</sup> day of September, 2001, sent via hand delivery, a copy of the foregoing PETITION FOR WAIVER OF SECTION 20.189(g) OF THE RULES filed today to the following:

Thomas Sugrue, Chief  
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Janelle Wood